



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: CWM Industries, Inc.

File: B-246350

Date: November 26, 1991

Larry Fisher for the protester.
Millard F. Pippin, Department of the Air Force, for the agency.

John W. Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that contract for overhaul of turbogenerator should not have included options to be exercised at a later time for additional work on other turbogenerators is dismissed since the protest does not advance a valid basis for protest. Since the solicitation included two optional line items for work on additional turbogenerators, the agency was permitted by the solicitation to award a contract that included options that could be exercised at a later time for work on the additional turbogenerators.

DECISION

CWM Industries, Inc. protests the award of a contract to Westinghouse Electric Corporation under request for proposals (RFP) No. F65501-91-R0025 issued by the Air Force for services for the overhaul of turbogenerators at Elmendorf Air Force Base.

We dismiss the protest.

The solicitation included three line items, the first for the inspection, service, repair and overhaul of turbogenerator No. 3 and the second and third line items for the same services on turbogenerators Nos. 1 and 2. In the RFP schedule of services, under the line items that concerned turbogenerators Nos. 1 and 2, the solicitation stated "(FY 92 FUNDING) (OPTION YEAR)." The solicitation also included spaces for separate prices for each of the three line items and a total for all three line items.

By letter of September 30, 1991, the Air Force notified CWM that a contract had been awarded to Westinghouse for the work on turbogenerator No. 3, the basic line item. The notice also stated that funds did not yet exist for the

award of the services for turbogenerators Nos. 1 and 2 which, according to the notice, "are options of the Government to exercise at a later date."

This protest followed. In the protest, CWM stated that "there are no options in the original contract for the Government to exercise that allows additional work on turbogenerators # 1 and # 2 without going through the bidding process." In this regard, the protester argues that the options for work on the additional turbogenerators could only be exercised when the basic contract was awarded. In response to the protest, the Air Force requested that we dismiss it since it says the solicitation did include options for turbogenerators Nos. 1 and 2 which it could exercise during 1992.

We agree with the Air Force that CWM has failed to advance a valid basis for protest. 4 C.F.R. § 21.3(m) (1991); Kleen-All Janitorial Serv., B-240856.2, Oct. 31, 1990, 90-2 CPD ¶ 378. Since the solicitation included two line items which the schedule stated were options for work on turbogenerators Nos. 1 and 2 in fiscal year 1992, the agency was permitted by the solicitation to award a contract that included options for that work.

Further, the solicitation incorporated the clause set forth at Federal Acquisition Regulation (FAR) § 52.217-9, entitled "Option to Extend Services," which in this case gives the government the right to extend the term of the contract for 1 year and 4 months, thus allowing it to extend the contract period until such time during fiscal year 1992 when funds become available. Furthermore, the solicitation incorporated the clause at FAR § 52.217-5 which, according to FAR § 17.208(c)(2), is to be included in solicitations when, among other circumstances, "[a]n option is not to be exercised at the time of award." Here, in the absence of language in the solicitation that limited the award of the option line items to the time of the award of the basic contract, we believe that the solicitation should have placed offerors on notice that the agency believed that the options for the services on turbogenerators Nos. 1 and 2 could be exercised at any time during fiscal year 1992 when funds become available.

While we think that the agency's intent should have been clear from reading the solicitation as a whole, to the extent that it was not clear to CWM or if the firm objected

to the agency's option scheme, it should have protested prior to the time set for the receipt of initial proposals, 4 C.F.R. § 21.2(a)(1) (1991), as amended by 56 Fed. Reg. 3759 (1991).

The protest is dismissed.

A handwritten signature in dark ink, appearing to be 'JB' followed by a long horizontal flourish.

John Brosnan
Assistant General Counsel